

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH

Petitioner,

v.

TOWNE TERRACE EAST and LINDA DAILY  
Respondents

Case No.: I-00-30247  
I-00-30220

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**FINAL ORDER**

**I. Introduction**

On September 28, 2001, the Government served a Notice of Infraction upon Respondents Towne Terrace East and Linda Daily, alleging that they violated D.C. Official Code § 47-2824 by operating a swimming pool without a license. The Notice of Infraction alleged that the violation occurred at 1420 N Street, N.W., on August 24, 2001, and sought a fine of \$500.

Respondents did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on October 23, 2001, this administrative court issued an order finding Respondents in default and subject to the statutory penalty of \$500 required by D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f) and requiring the Government to serve a second Notice of Infraction.

The Government then served a second Notice of Infraction on November 6, 2001. Respondents also did not answer that Notice within twenty days of service. Accordingly, on

December 14, 2001, a Final Notice of Default was issued, finding Respondents in default on the second Notice of Infraction and subject to total statutory penalties of \$1,000 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f).

On January 4, 2002, Respondents filed an answer with a plea of Admit with Explanation, along with payment in full of the \$500 fine and a request for suspension of the statutory penalty for failure to file timely answers to the Notices of Infraction. The Government has filed a response supporting Respondents' request.<sup>1</sup>

## **II. Summary of the Evidence**

Respondents assert that they filed a plea of Admit with Explanation in November 2001, after receipt of the second Notice of Infraction. Respondents enclosed a copy of that plea and explanation with their January 4 filing. At that time, Respondents requested suspension or reduction of both the fine and the statutory penalty on the ground that they had acted reasonably in delegating responsibility for obtaining the necessary license to the contractor whom they had hired to manage the swimming pool.

In their January filing, Respondents alleged that they had applied for the necessary license and had submitted all appropriate fees. In addition, they stated that the contractor had agreed to be liable for the \$500 fine and enclosed a check in that amount. They asked for

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<sup>1</sup> The Government's response is filed on this administrative court's form for a Summary Motion For Dismissal of Charge(s) or Reduction of Fine(s). That form, however, should be used only when the Government initiates a request to dismiss a charge or to suspend or reduce a fine or penalty. It should not be used to respond to a plea of Admit with Explanation; instead the Government should file a memorandum or a brief. In this case, however, I will consider the substance of the Government's submission, notwithstanding its submission on the wrong form.

suspension of the statutory penalty for their failure to file timely answers to the Notices of Infraction.

The Government supports Respondents' request, noting that its records show that Respondents corrected the violation by obtaining the required license. According to the Government, a "total assessment" of \$500 is acceptable to resolve Respondents' liability for both the fine and the statutory penalty.

### **III. Findings of Fact**

Respondents' plea of Admit with Explanation establishes that they operated a swimming pool without a license on August 24, 2001. Respondents have accepted responsibility for the violation and have corrected it by obtaining a license. There is also no evidence in the record that Respondents have a history of prior violations.<sup>2</sup> Upon receipt of the first Notice of Infraction, Respondents relied upon their contractor to answer it. When they received the second Notice of Infraction, Respondents mailed a plea of Admit with Explanation within ten days. The Docket Clerk did not receive that plea, however.

### **IV. Conclusions of Law**

Respondent's plea of Admit with Explanation establishes that they violated D.C. Official Code § 47-2824 on August 24, 2001. The fine for a first violation of §47-2824 is \$500. 16 DCMR 3214.1(u). *See DOH v. Watergate Fitness Center*, OAH No. I-00-30137 at 5 (Final Order, December 14, 2000).

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<sup>2</sup> On December 26, 2001, Towne Terrace West, Armstrong Management and Wayne McCreedy filed a plea of Admit to a charge of violating D.C. Official Code § 47-2824 in Case No. I-00-30246. The record reveals no apparent relationship between those Respondents and the Respondents in this case.

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f).

In an ordinary case, Respondents’ payment of the full amount of the fine would mean that the only issue left for decision is whether Respondents have demonstrated good cause for their failure to file timely answers to both the first and second Notices of Infraction. *See, e.g., DOH v. Romulo’s Garage and Trucking*, OAH No. I-00-10711 at 2 (Final Order, June 5, 2001). Here, however, the Government has consented to suspension of the statutory penalties. Its stated reasons include factors normally applicable to reduction of the fine amount, including Respondents’ correction of the violation. The Government’s consent to suspension of the statutory penalty reflects its view that Respondent should pay a total of \$500 for both the violation and the late filing, rather than a strict analysis of the “good cause” standard of D.C. Official Code § 2-1802.02(f).

This administrative court, however, will give effect to the Government’s exercise of its prosecutorial discretion not to demand a statutory penalty, provided there is “unambiguous consent from the Government, accompanied by a statement justifying suspension.” *DOH v. East River Bagel, Inc.*, OAH No. I-00-70227 at 5 (Final Order, June 28, 2001). Here, the Government unambiguously has consented to suspension of the statutory penalty, and has provided a reasonable justification for that consent, *i.e.*, its view that the appropriate “total assessment” that

Respondents should pay is \$500. In light of the mitigating evidence concerning the violation, as well as the evidence that Respondent made a good faith effort to file a timely answer to the second Notice of Infraction, that “total assessment” is within the zone of reasonableness. I therefore will grant the joint request of Respondents and the Government to suspend the statutory penalty in light of Respondents’ payment of a \$500 fine.

**V. Order**

Based on the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that, with the consent of the Government, a statutory penalty will not be imposed in this matter; and it is further

**ORDERED**, that because Respondents have paid the full fine for violating D.C. Official Code § 47-2824, the Docket Clerk shall mark this case **CLOSED**.

**FILED 07/09/02**

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John P. Dean  
Administrative Judge